

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: November 22, 2005  
Decided: February 28, 2006

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Re: *Quesenberry v. Beebe Medical Center, Inc., et al.*,  
C.A. No. 02C-05-304-FSS  
*Upon Defendants' Motions for Judgment Notwithstanding the  
Verdict or, Alternatively, For a New Trial – **DENIED.***

*Re: Quesenberry v. Beebe Medical  
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Dear Counsel:

This is a medical negligence case. When Plaintiff sought treatment in the Defendant hospital's emergency room, the Defendant physician failed to diagnose her hypercoagulable state and a blood clot that had formed in one of her kidneys. Defendants released Plaintiff and her condition worsened. Two days later, she returned to the emergency room. By then, it was too late to save her kidney.

Furthermore, she developed blood clots in her spleen and lungs. Due to the blood clots, Plaintiff lost a kidney, endured a prolonged hospital stay and she incurred financial loss. After an eight day trial, a jury awarded Plaintiff \$570,000, apportioning liability 60% to the Defendant doctor and the rest to the Defendant hospital. The jury found a second physician not liable. He had operated on Plaintiff's knee the day after Plaintiff's first emergency room visit and the day before her second visit.

Defendants filed timely motions for judgment as a matter of law or, alternatively, for a new trial. In response, the court called for extensive briefing and oral argument. The court has reviewed and re-reviewed the record. Although the Plaintiff's evidence is far from overwhelming, when the evidence is viewed in a reasonable light most favorable to Plaintiff, the court cannot conclude that there is insufficient evidence to support the jury's liability findings. By the same token, while the verdict was high, the court cannot dismiss it as the product of sympathy, confusion or improper motive. Nor can the court call it shockingly out of line.

## I.

In summary, Plaintiff went to the emergency room on June 6, 2000 with flank pain and complaints that were tell-tale signs for a kidney problem. The Defendant physician ordered a CT scan, without contrast, and urinalysis. The latter was supposed to have been obtained by catheter. The CT scan was unrevealing and

the urine, which was taken by “clean catch,” showed some blood. Accordingly, Defendant physician diagnosed Plaintiff with a probable infection and he released her.

The evidence easily demonstrates that Plaintiff actually had a serious blood clot in a kidney. Most likely, the clot formed because Plaintiff had become prone to clotting due to HRT and a knee injury she had sustained a few days earlier. Viewed in a reasonable light most favorable to Plaintiff, the Defendant Physician failed to get to the bottom of Plaintiff’s problem on June 6, 2000. In part, his mistake was attributable to his reliance on the urine sample, which was improperly obtained by Defendant hospital’s nursing staff. Had Defendant physician been more thorough, as Plaintiff’s expert’s opinion on standard of care required, he would have ordered a second CT scan, but with contrast, on June 6, 2000.

According to Plaintiff’s experts, if the Defendant physician had ordered a CT scan with contrast on June 6, 2000, it would have revealed the clot. Finding that highly unusual condition would have prompted further inquiry about Plaintiff’s hypercoagulable state. On June 6, 2000, according to her experts, Plaintiff’s kidney probably was salvageable through surgery, and addressing her blood condition sooner would have reduced or eliminated her subsequent clotting problems. Plaintiff’s experts saw the 48 hour delay in proper treatment as pivotal.

Defendants presented expert testimony, which if believed, would have led to the jury’s finding that Defendants were not negligent. Furthermore, Plaintiff’s kidney could not have been saved and any neglect during her first emergency room visit did not cause her subsequent problems. Regardless of whether the court might have accepted Defendant’s experts’ opinions, the jury did not.

## **II.**

As for damages, if Plaintiff’s claim consisted of nothing more than the loss of a kidney, which was not followed by its surgical removal, the damage award

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might be shocking. Many people do well with only one kidney. Plaintiff and her experts, however, obviously convinced the jury that the problems stemming from her undiagnosed hypercoagulable state, including her subsequent hospital admission, were due to Defendants' initial negligence. Again, Defendant presented potentially persuasive evidence that Plaintiff's damages were attenuated and overstated. The court, however, is constrained to hold that Plaintiff's damages are against the great weight of the evidence or the jury's verdict was shockingly excessive.

### **III.**

For the foregoing reasons, Defendants' motions for judgment notwithstanding the verdict or, alternatively, for a New Trial are ***DENIED***. By separate order, and upon submission to the court from counsel, the court will enter judgment in favor of the Defendant physician who was found not liable.

**IT IS SO ORDERED.**

Very truly yours,

FSS/lah  
oc: Prothonotary (Civil Division)